

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/062/2022

(Present: A. Chandrakumaran Nair)

Dated: 16th November, 2022

Appellant : Sri. Nevin. T. Jacob.,
Thadikulangara House,
Jyothi Nagar 151, Mekkad,
Angamaly,
Ernakulam 683589

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Agnamaly, Ernakulam Dist.

ORDER

Background of the case:

The appellant is the consumer of Licensee under Electrical Section, Angamaly having consumer number 1155792001649. The appellant had received a short assessment bill for Rs.19,300/- as per RAO audit vide invoice dated 20-03-2020. This is the difference of fixed charge for the period from 22-06-2016 to 20-03-2019. The residential building was occupied by rented party for accommodating their employees. The rented party has vacated settling the dues. This short assessment has come due to the wrongly changing the tariff from LT 1A to LT 7A by the Suo moto action of KSEBL. The appellant approached the Consumer Grievance Redressal Forum, Central Region and the order of CGRF (CR) states that the petitioner is liable to pay the short assessment bill issued by the Licensee.

Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

Arguments of the appellant:

The appellant had received a short assessment invoice of Rs.19,300/- as per RAO audit vide invoice dt. 29.03.22, on account of difference in fixed charge for the period 22-06-2016 to 20-03-2019. The residential building was occupied by rented

party for accommodation of their employees during the said period. Now the party vacated the building settling the due bills and other payments. It is observed that billing tariff was wrongly changed without any intimation from LT1A (Domestic) to Commercial (LT7A) Suo moto by KSEB assuming it is a commercial hostel.

Appellant had approached CGRF on 09.05.'22 and online hearing was held on 24.06.'22. In the statement of facts submitted by Asst. Executive Engineer (Asst.EE) Angamaly Section to CGRF, they have wrongly claimed that tariff change was initiated by the appellant and commercial activity related to gold business of the tenant was carried out in the premises. Appellant had informed CGRF that tariff change request was not initiated by the appellant and Asst. EE admitted that they don't have any document pertaining to tariff change request from the appellant. Also Asst. EE misguided CGRF that gold business was carried out from the premises, which is logically inadmissible. CGRF had also pointed out that why connected load was not regularized at the time of tariff change despite it being a three-phase connection.

Despite Asst. Engineer not able to prove that tariff change was initiated by appellant and also that the new tariff is applicable for the said building, CGRF has not considered appellant's arguments and rejected the claim to refund the excess amount collected from Jun '16 to Jan '21 on account of wrong tariff. Also, the reason for rejection of appellant's claim has not been included in the order issued by CGRF.

As a bona fide consumer, appellant requested to direct Asst. EE to adjust the excess amount collected on account of tariff change in the short invoice issued basis RAO audit.

Arguments of the respondent:

The appellant is a consumer under Electrical Section, Angamaly bearing consumer number 1155792001649 under LT 7 A tariff with a connected load of 5865 Watts. Tariff of the appellant was LT 1A domestic up to 22-06-2016 with connected load 150 watts (3 phase). The opposite party Suo moto changed the tariff to LT VII A on 22-06-2016.

At the time of tariff change, the premises was used for M/s. Chemmannur jewellers staff quarters and at the same time they used the premises for commercial activities relating their gold business. The KSEBL staff convinced the occupier the reason for tariff change at that time. During this tariff change, no change was made

in connected load, which remains as 150 watts. The consumer submitted an application for ownership change and connected load change and regularize the load on 08.04.2019.

A comparison of consumption of electricity before and after the connected load regularized on 20.03.2019 to 5864 watts is given below:

Consumption when connected load 5864 watts	Consumption when connected load 150 watts
995	1039
1007	1048
936	1133
979	988
1172	1085
1062	1040
980	
1134	
1040	

While comparing the average consumption of the appellant was almost same as both before and after change in connected load. So, the connected load at the time of tariff change was 5864 watts. It caused a loss for KSEB Ltd in fixed charge for the period from 22-06-2016 to 20-03-2019. Therefore, an amount of Rs.19,300/- was charged in FC portion as short assessment bill to the consumer as per regulation 134 (1) of Kerala Electricity Supply Code 2014

Calculation

Fixed charge to collect from 22-06-2016

to 20-03-2019 = Rs.120 x 5 kw x 32 months = Rs.19,200/-

Appellant applied for load change on 12-03-2019. This change was effected in system only on 20-03-2019. Delay of 8 days in effecting caused shortage in FC, which may be recovered.

Fixed charge under 7A tariff (3 Phase) = Rs. 120/-/kw/ month

Short in FC due to 8 days delay = $\frac{\text{Rs. } 120 \times 5 \text{ kw} \times 5}{30 \text{ days}}$

= **Rs. 100/-**

Total amount to collect = **Rs.19,300/-**

The appellant filed a petition before CGRF, Central Region vide petition No. OP.16/2022-23 and the Forum by its order dated 27/07/2022 held as follows: "Section 56 (2) did not preclude the licensee company from, raising an additional or

supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bond fide error". The Order of the Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 (Assistant Engineer (S1) Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamatullah Khan Alia Rahamjulla). While Reg.134 empowers the licensee to levy the undercharged bills, the version of the Hon'ble Supreme Court in CA No.1672 of 2020 lift the barrier for the limitation of claiming the arrear bill. In the instant case, the mistake was detected during the period and the undercharged amount for the period from 22/6/2016 to 20/3/2019 was billed on the consumer. On going through the above facts and arguments, the Forum notices that the respondent is empowered to realize the undercharged bills as per the guidelines mentioned above. The Forum held that petitioner is liable to pay the short assessment bill issued by the licensee.

Kerala State Electricity Board Limited has every right to collect the amount for short in Fixed charge from the consumer. The bill is legally due to Kerala State Electricity Board Limited and the consumer is bound to pay the amount due to Kerala State Electricity Board Limited for the electricity charges used by it as per Regulation (134) of *Kerala Electricity Supply Code 2014* and Reg.134 of Electricity Supply Code, 2014 Section 56 (2) of the Electricity Act, 2003 as well as the order of the Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 (Assistant Engineer (51) Ajmer Vidyut Vitran Nigam Limited & Anr. Versus Rahamattullah Khan Alia Rahamjulla). Section 56. (Disconnection of supply in default of payment) says that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under the section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. Hence the demand is legally correct.

Therefore, it is requested to accept the contention of the opposite party and uphold the order of the CGRF and thereby direct the appellant to remit the amount as per the bill issued.

Analysis and findings:

The hearing of the case was conducted on 19-10-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The appellant Sri. Nevin. T. Jacob was attended the hearing and Sri. C.K. Anandan,

Assistant Executive Engineer, Electrical Sub Division, Angamaly was attended the hearing from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The appellant is the consumer of Licensee under the Electrical Section, Angamaly. The connection was a domestic connection under tariff LT 1A up to 22-06-2016 with connected load 150 W, 3-phase. The Assistant Engineer of the Section has changed the tariff from LT 1A to LT 7A of this building which was rented out to accommodate the employees of M/s. Chemmannur Jewellers. The action of tariff change done by the Licensee Suo moto.

Section 173 of Kerala Electricity Supply Code 2014 states on "General provisions relating to inspection" as follows: -

- Section 173 (1) Every inspection conducted by the licensee shall be transparent, fair and free of prejudice.
- Section 173 (2) While seeking entry into the premises of the consumer, the authorised employee of the licensee shall visibly display his name tag and produce for scrutiny, the proof of identity or authorisation of the distribution licensee and shall inform the consumer of the purpose of his entry into the premises.
- Section 173 (3) The authorised employee of the licensee shall also carry the job sheet or work order or similar authorisation setting out the work required to be done at the premises and show the same to the consumer before entering the premises.
- Section 173 (6) The officer who prepares the mahazar or the inspection report shall obtain the signature of inspecting officers, officers of the licensee at site and of independent witnesses.
- Section 173 (9) As far as possible, the officer authorised to inspect the premises of the consumer shall take two independent witnesses for the inspection of the premises and shall make such independent witnesses fully aware of the facts recorded in the mahazar and shall obtain their signature in the mahazar.
- Section 173 (10) The name and official addresses of all inspecting officers as well as full permanent address of witnesses shall be recorded in the mahazar.
- Section 173(11) A copy of the mahazar shall be handed over to the consumer/occupier/representative present at the premises, under proper acknowledgement at the spot itself on completing the inspection.

In this case, the Assistant Engineer of the Section Office conducted inspection and decision has taken to change the tariff from LT 1A to LT 7A without preparing any inspection report or site mahassar. The reason to change the tariff has not been recorded or not able to produce any evidence by the respondent. The appellant states that the building is a residential building and no commercial activities are done. The respondent is failed to submit the documents showing that there was some commercial activity. As such the tariff change is not justifiable. No opportunity is given to the appellant to hear from their side before changing the tariff.

Decision: -

From the analysis of the arguments and the hearing, following decisions are hereby taken:

- (1) The order of CGRF (Central Region) is set aside.
- (2) The tariff change applied is not legal and hence, not sustainable.
- (3) Short assessment, if any, as per tariff LT 1A if applicable is to be reworked and appellant is liable to pay only this amount.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/062/2022/_____ dated _____.

Delivered to:

1. Sri. Nevin. T. Jacob., Thadikulangara House, Jyothi Nagar 151, Mekkad, Angamaly, Ernakulam 683589
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Agnamaly, Ernakulam Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.